

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs

No. CR 1:23-33 KWR

KEITH DIEMER,

Defendant.

**ORDER GRANTING CONTINUANCE OF TRIAL
AND PRETRIAL DEADLINES**

THIS MATTER is before the Court on *Defendant's Third Unopposed Motion to Continue Trial*, filed October 20, 2023 (Doc. 21). The Court having considered the motion and holding in *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009), finds for reasons as indicated in defendant's motion a sufficient record has been created to justify granting the motion to continue. See id., 574 F.3d at 1271 (requiring that the record on a motion to continue contain an explanation of why the mere occurrence of the event identified by the party as necessitating the continuance results in the need for additional time). Additionally, the Court finds further that pursuant to the relevant factors under 18 U.S.C. §3161(h)(7)(B)(i-iv), a continuance is necessary so that defendant may commence plea negotiations with the government. It is believed that a negotiated resolution of this matter may be possible and that additional time is necessary to pursue such negotiations. Counsel for Mr. Diemer is pursuing such negotiations and believes that a resolution of this matter can be reached, but requires additional time to pursue such negotiations. Should plea negotiations not yield a resolution, defense counsel requires additional time to a) interview any additional witnesses; b) to obtain expert witnesses for trial; and c) to file pretrial motions. Defendant requests a continuance of the trial of no less than 90 days from the current setting. Counsel believes that

length of time to be the minimum needed to initiate plea negotiations with the government and to ensure that Defendant receives effective assistance of counsel and is accorded due process which justifies a continuance. Therefore, all the time from the filing of the motion until the beginning of jury selection in this matter shall be excluded for the purposes of the Speedy Trial Act.

IT IS THEREFORE ORDERED that the Jury Selection/Trial of **November 6, 2023**, is **VACATED**. Call of Calendar is reset on **February 8, 2024, at 9:00 a.m.** and Jury Selection/Trial is reset for **February 12, 2024, at 9:00 a.m.**, on a trailing docket at the United States Courthouse, 333 Lomas Blvd., NW, Bonito Courtroom, before Judge Kea W. Riggs in Albuquerque, New Mexico.

IT IS FURTHER ORDERED that the substantive motion deadline is hereby extended until **January 2, 2024**.

IT IS FURTHER ORDERED that, so as to conserve judicial resources, any motion to continue trial must be filed no later than **January 29, 2024**.

IT IS FURTHER ORDERED that pursuant to 18 U.S.C. §3161(h)(7)(A), the Court finds that the ends of justice served by granting the unopposed motion for continuance outweigh the best interest of the public and the defendant in a speedy trial.

IT IS FINALLY ORDERED that counsel shall adhere to the instructions and case management deadlines as set forth in the following attachment, "Preparation for Criminal Trial" (includes guidelines for preparation of proposed jury instructions, JERS Informational Letter, and JERS link).

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE

**PLEASE REFER TO THE FOLLOWING
ATTACHMENTS FOR ADDITIONAL DEADLINES AND INFORMATION:**

“Preparation for Criminal Trial” (includes guidelines for preparation of proposed jury instructions, and a link to JERS procedures).

OTHER INSTRUCTIONS/MOTION TO CONTINUE TRIAL DEADLINE:

Motions for continuance in criminal cases must be filed in accordance with 18 U.S.C. § 3161(h)(7)(A), specifically setting forth the factual grounds justifying the continuance under the statute. In cases involving multiple defendants, counsel must file a joint motion for continuance with all counsel approving said motion. MOTIONS TO CONTINUE MUST COMPLY WITH THE SPECIFIC REQUIREMENTS SET FORTH IN *UNITED STATES V. TOOMBS*, 574 F.3D 1262 (10TH CIR. 2009). THE MOTION “MUST CONTAIN AN EXPLANATION OF WHY THE MERE OCCURRENCE OF THE EVENT IDENTIFIED BY THE PARTY AS NECESSITATING THE CONTINUANCE RESULTS IN THE NEED FOR ADDITIONAL TIME.” *ID.* AT 1271. MOTIONS CONTAINING SHORT, CONCLUSORY STATEMENTS REGARDING THE REASON A CONTINUANCE IS REQUESTED ARE INSUFFICIENT UNDER *TOOMBS* AND WILL BE SUMMARILY DENIED BY THE COURT.

TRAILING TRIAL DOCKET:

Counsel are referred to the trailing docket of cases as they appear for jury/selection trial on the Public Court Calendar for February 2024. The order in which cases appear on the Court Calendar does not necessarily reflect the order in which cases will be tried.